

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on October 20, 2004

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
Leonard A. Weiss
Neal N. Galvin

CASE 03-C-0922 - Proceeding on Motion of the Commission to
Examine Telephone Network Reliability.

ORDER DENYING PETITION FOR REHEARING
AND CLARIFYING ORDER OF JULY 28, 2004

(Issued and Effective October 26, 2004)

BY THE COMMISSION:

BACKGROUND

By Order issued July 21, 2003 (the June 21st Order), the Commission established this proceeding to "examine the current state of reliability of the telecommunications network, desirable or optimal levels of reliability in the State, and actions that could be taken to maintain, enhance and/or increase the reliability of the State's telecommunications network..."¹ Our goals in establishing this proceeding are "to foster dialog among the stakeholders of the State's telecommunications network to ensure a common understanding of existing reliability and desirable levels of reliability, as well as steps that should be taken to achieve or maintain an optimum level of reliability in the state" (Order, p. 2).

¹ Case 03-C-0922, Order Instituting Proceeding (issued July 21, 2003), p. 4.

Subsequent to the initial Order, a Notice Seeking Comment was issued August 25, 2003. Comments and reply comments on a Staff White Paper entitled "Network Reliability After 9/11" were sought from parties in the proceeding. The White Paper amplified on lessons learned after September 11, 2001 and other major network outages. Among the findings and tentative conclusions in the White Paper was a finding that:

Information on the physical path taken by key circuits will likely be required to meet some customer-specific needs, would aid in maintaining diversity once it is established, and would be helpful in coordinating a response during a service failure. Staff tentatively concludes that carriers should upgrade their systems for tracking and storing information regarding physical routing of facilities.

After analysis and consideration of the parties' comments and replies, we issued on July 28, 2004, an Order Concerning Network Reliability Enhancements. On the issue of identifying the physical path taken by key circuits, i.e., circuits that have been registered under the federal Telecommunications Service Priority (TSP) program, the July 28th Order stated:

In addressing network reliability, identification of the physical routing of critical circuits to customers who demonstrate that local, state or national interests compel a higher degree of reliability takes a high priority. We believe a show cause order to implement a new protocol specific to such circuits is an appropriate next step to enhance the reliability of services for the state's most critical telecommunications facilities. Carriers should either introduce, or show cause why they should not introduce, a new service to customers with such critical circuits. The "Critical Facilities

Administration" service will provide physical routing information for a fee, to those customers who have an identified need to know and are willing to pay to participate.

On August 30, 2004, AT&T Communications of New York, Inc. (AT&T) filed a petition for reconsideration, requesting that we reconsider the establishment of the "Critical Facilities Administration" (CFA) service. Between August 31 and September 7, 2004, five parties, including Verizon New York, Inc. (Verizon), Qwest Communications Corporation (Qwest), MCI, Inc. (MCI), New York Telecommunications Association, Inc. (NYSTA), and Time Warner Telecom-NY, L.P. (Time Warner), submitted letters in support of AT&T Communications' petition for reconsideration. On October 8, 2004, The Clearing House Association, LLC, d/b/a The Clearing House (TCH), filed an opposing petition to AT&T's request as did the City of New York on October 14, 2004.²

AT&T'S PETITION

AT&T's primary concern in developing the Critical Facilities Administration service is that it could compromise the security of the telecommunications network and infrastructure in New York and throughout the country. According to AT&T, in order to implement this service as described in our July 28th Order, "carriers would be required to maintain and share a geo-referenced database that contains information highly proprietary to AT&T as well as to other carriers." The company notes that as a general practice, it makes available to certain customers, who demonstrate a valid need to know, the physical facility paths from their location to

² Joining TCH in its filing were the Depository Trust & Clearing Corporation and the Securities Industry Automation Corporation.

the circuits' terminating point. However, the company says that it "neither provides copies of the documentation presented nor allows customers to make their own copies of the routes so displayed, for fear of further dissemination." According to the company, this practice affirms and demonstrates to customers that their circuits are routed through diverse paths.

AT&T also says that its interactions with its customers, including TSP customers, recognize the importance of reliability to these customers, while also ensuring protection of the "highly sensitive infrastructure" supporting their service. The company is concerned that critical infrastructure risk will likely result from "the increased proliferation of sensitive routing and facility information, no matter how well intentioned the requirement, or comprehensive the security and non-disclosure agreements."³ The company also notes that it offers proven effective services that "guarantee end-to-end route diversity to customers who are willing to pay for this service."

AT&T is also concerned that if Critical Facilities Administration service were offered as described in the July 28th Order, in the course of making routing information available to requesting TSP customers, facilities information for other customers would also be released, because other customers may share facilities resident on the same cable and conduit infrastructure. Thus, the other customers' facilities would

³ The company notes that the TSP circuits which would be subject to the CFA service require the utmost protection from "compromise of information" to those persons or groups that would use the information to bring harm to our national telecommunications systems. It cites a report that terrorist groups had recently obtained detailed information concerning certain financial institutions' infrastructure and had conducted extensive physical and cyber surveillance of potential targets.

also be rendered vulnerable and could suffer the same harm as the TSP customers if this information were compromised.

AT&T also contends that our mandate of a Critical Facilities Administration service would be contrary to two of the Network Reliability and Interoperability Council's (NRIC) Best Practices. The company notes that NRIC Best Practice 6-6-5111 states "Network Operators should not share information regarding the location, configuration, or composition of telecommunication infrastructure where this information would be aggregated at an industry level." Also, NRIC 6 Recommendation VI-1A-12 concluded, "As a general practice, government entities should not aggregate sensitive information critical to the communications infrastructure. Exceptions should be limited to information needed to address specific concerns in support of federal Homeland, or National Security objectives. Federal, State, or local government requests for industry information should be handled in accordance with, and given the protections provided by, the Homeland Security Act of 2002, Section 214." AT&T believes that the creation of the facility database and making physical route information available to TSP customers contravenes these NRIC Best Practices.

Finally, AT&T claims that the cost of implementing the Critical Facilities Administration service would be prohibitively expensive, and could far outweigh the benefits. The company says that implementation of this type of program would entail significant expense in order to develop "a new database employing the strictest access security available to guarantee the secure transmission of data to customers." Other cost considerations, such as the need to operate 24 hours by seven days a week, and the need to provide information on moves, changes and revisions to customers' circuit paths, were also cited.

FILINGS IN RESPONSE TO AT&T'S PETITION

Verizon, MCI, Qwest, NYSTA and Time Warner each filed letters essentially agreeing with AT&T's contentions that CFA would require the placement of highly sensitive data in the public domain, and/or that the creation of a CFA service would be very expensive and financially burdensome. TCH and the City of New York filed in opposition to AT&T's petition, arguing that the security and cost concerns raised by AT&T are baseless.

DISCUSSION

Neither AT&T's petition, nor the filings in support thereof, allege or demonstrate that the Commission committed an error of law or fact, or that new circumstances warrant a new determination by the Commission. Thus, the petition will be denied, as it does not meet the standards for a petition for reconsideration stipulated by the Commission's Rules and Regulations.⁴

We also want to make clear that we are unequivocal in our belief that the security of the State's infrastructure is of paramount concern. Nothing in our expectations related to CFA service diminishes that concern and we will examine the proposed tariffs and related filings to show cause with a focus towards ensuring the security of the underlying infrastructure. AT&T's principal argument alleging security risks appears to be its misperceptions that the CFA service would require establishment of a centralized database placing infrastructure information "in the public realm." In fact, the CFA service would require neither. Our Order makes it clear that each carrier would maintain its own database that would only allow a customer subscribing to the service "to access information of the

⁴ See 16 NYCRR Section 3.7(b).

physical path for only its subscribed circuits ... subject to appropriate authentication and authorization.”⁵ The remaining issues raised by AT&T, i.e., the cost of developing a secure CFA database, and the impact of those costs on competitive positions, may be legitimate issues for discussion, but they are more appropriately raised in the parties’ responses to our show cause Order.⁶

As stated above, we believe that some of AT&T’s concerns stem from a misunderstanding of our Order. Therefore, some clarification of the Order relative to CFA service would be helpful at this juncture. First and foremost, it is our intention that the CFA service should meet the needs of the carriers’ customers. One way of doing so is for each carrier to establish a secure, on-line database to house critical circuit physical path data for CFA service subscribers, as discussed in the July 28th Order. However, as an alternative, carriers may find it sufficient to provide subscribing customers information on the physical routing of their circuits via other means, such as hard copy or CD-ROM, if an on-line, electronic database proves to be impractical or if there is no demand for electronic access.⁷ In addition, carriers need not be required, where

⁵ Staff Memorandum at Appendix B.

⁶ Responses to Clause 4 of the July 28th Order are due on November 25, 2004.

⁷ Carriers should take all reasonable steps to keep customer specific routing information as secure as possible. They also must cooperate when more than one carrier is involved in the provision of a circuit to a subscriber of CFA service (as discussed in footnote 31 on page 30 of the Staff memorandum appended to the July 28th Order). In this manner a subscriber will have complete routing information on his/her specific critical circuit. In our view, this is not inconsistent with the NRIC Best Practices identified by AT&T because it is subscriber-specific information.

impracticable, to provide the physical route information on a 24 hour by seven day basis, as long as carriers can assure that physical changes to CFA circuits are promptly noted and documented. Accordingly, the description of CFA in Appendix B to the July 28th Order should be modified as follows:

The carrier must establish a secure database or other means that would allow the customer to [access] obtain information of the physical path for only its subscribed circuits, subject to appropriate authentication and authorization. Where practicable, the information should be made available on a 24 hour by seven day basis.

These clarifications will allow some flexibility and possible cost relief to the carriers, and, ultimately, potential subscribers, while at the same time not compromising the essential information needs of the subscribers.

FINDINGS AND CONCLUSION

AT&T has not provided any grounds for reconsideration of the July 28th Order with respect to the establishment of Critical Facilities Administration service. Accordingly, the petition for reconsideration will be denied. Notwithstanding, we will clarify our Order as previously discussed.

The Commission orders:

1. The petition for reconsideration by AT&T Communications of New York, Inc. is denied and the Order issued July 28, 2004 is clarified as stated above.
2. This proceeding is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary